Open carry of firearms by county tax collector

Number: INFORMAL

Date: December 21, 2018

The Honorable Phil Archer
State Attorney
Eighteenth Judicial Circuit of Florida
Post Office Box 8006
Sanford, Florida 32772-8006

Dear Mr. Archer:

You have written to request a formal opinion regarding the following questions:

1. (a) May a County Tax Collector issue a metallic badge that is similar in design, size, color, material, and manner of wearing to those worn by law enforcement officers, to both himself/herself and members of his/her staff?
(b) If yes, may a County Tax Collector, or a member of his/her staff, wear said badge when not engaged in the performance of his/her official duties?
2. Does a County Tax Collector constitute a "revenue officer" under section 790.25(3)(d) such that he/she, or his/her deputies and assistants, may openly carry a firearm?

Attorney General Pam Bondi has asked me to respond to your letter.

Issuance and Wearing of Metallic Badges by County Tax Collector

You advise that your first question stems from information learned through your office's review of a Seminole County Sheriff's Office investigation regarding a traffic complaint by a private citizen. This involved an incident in which the county tax collector, driving a privately owned vehicle with an illuminated white strobe light on its dashboard, allegedly followed a motorist into her subdivision, ultimately pulling his vehicle in behind hers. At that point, the tax collector reportedly approached the motorist at the driver's side window after she exited her vehicle, and admonished the motorist for "driving like a bat out of hell." The driver indicated that the tax collector was wearing cargo shorts, a jacket, a tactical style vest "similar to that worn by law enforcement," and a lanyard displaying a badge which was "metallic, round at the bottom with an eagle…design at the top, and similar to that of a Federal Bureau of Investigation badge." It was later determined that the tax collector had issued badges in this design to himself and to various members of his staff.

You further advise that your office "reviewed the investigation submitted by the Seminole County Sheriff's Office" and determined that the incidents described, and the tax collector's behavior, did "not violate the letter of the criminal laws" addressing the Unlawful Use of Badges or Other Indicia of Authority (section 843.085(1), Florida Statutes (2018)), or False Personation [of an Officer] (section 843.08).

On that basis, with respect to this first question, we regret that we are unable to assist with your

inquiry. The authority of the Attorney General to provide legal opinions is specified in section 16.01(3), which provides:

"Notwithstanding any other provision of law, [the Attorney General'] shall, on the written requisition of the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, or the Minority Leader of the Senate, and may, upon the written requisition of a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision, give an official opinion and legal advice in writing on any question of law *relating to the official duties of the requesting officer*."

(Emphasis added). Consistent with these constraints, because you have already determined that the letter of the criminal statutes you enforce has not been violated by the behavior exhibited by the tax collector, this office must decline to address your question regarding the authority of the tax collector to issue such badges to himself and to his staff, and to wear such badges when not engaged in official duties.

"Open Carry" of Firearms by County Tax Collector and Deputy Tax Collectors

With respect to your second question, however, you indicate that the county tax collector has also adopted a firearm "open carry" policy for himself and designated deputy tax collectors, maintaining that this is authorized under the "revenue officer" exception contained in section 843.085(1). This raises the second issue you pose, regarding whether "an elected County Tax Collector constitute[s] a 'revenue officer' for purposes of the permissible open carry of a firearm in the State of Florida[.]" Since your question implicates your stated concerns as a State Attorney regarding a law you are charged to enforce, we provide these informal observations for your consideration.

Section 790.25(3)(d), Florida Statutes, provides that certain law enforcement officers and peace officers—including "revenue officers"—may lawfully own, possess, and use firearms for lawful purposes. Although, as you observe, the phrase "revenue officer" is not separately defined in chapter 790, the meaning of the phrase is unambiguous when construed to be of the same kind, class, or nature as the "other peace and law enforcement officers" described in section 790.25(3)(d). A "peace officer" is a "civil officer (such as a sheriff or police officer) appointed to maintain public tranquility and order."[1] A "law enforcement officer" is "any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state."[2]

Consistent with these meanings, section 790.25(3)(d) provides:

"3) LAWFUL USES.—The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:
* * *

(d) Sheriffs,[3] marshals,[4] prison or jail wardens,[5] police officers,[6] Florida highway patrol officers,[7] game wardens,[8] revenue officers,[9] forest officials,[10] special officers appointed under the provisions of chapter 354,[11] and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state[.]"

It thus appears, from examining each of these enumerated exceptions, that the exemption in subsection (3)(d) from compliance with the "open carrying of weapons" provisions of section 790.053 and the "concealed weapon or firearm" provisions of section 790.06 is intended to apply to law enforcement and peace officers, with certain such officers having been described by the Legislature in an illustrative, but inexhaustive, list.

However, nothing in section 197.413, Florida Statutes, or in other statutory provisions relevant to the tax collector's responsibilities, suggests that county tax collectors act as "law enforcement officers" or "peace officers" in fulfilling their statutory duties. While county tax collectors are authorized to levy on property subject to unpaid tax liens using the judicial process outlined in section 197.413, that section provides, in pertinent part, that, when "any tax warrant is levied upon any debtor or person holding property of the taxpayer, *the debtor or person shall pay the debt or deliver the property of the delinquent taxpayer to the tax collector levying the warrant*, and the receipt of the tax collector shall be complete discharge to that extent of the debtor or person holding the property."[12] Therefore, a tax collector—who is not acting as an authorized law enforcement officer or peace officer in fulfilling his or her duties—would not fall within the "revenue officer" exception provided by section 790.25(3)(d), and would not otherwise be exempt, as a tax collector, from the statutory proscriptions which apply to individuals carrying weapons (either openly, or concealed).

Based on the foregoing, it would appear that county tax collectors do not fall within the "revenue officer" exception to the prohibitions regarding carrying a firearm set forth in section 790.25(3)(d). I trust that these informal comments may be useful to you.

Sincerely,

Teresa L. Mussetto
Senior Assistant Attorney General

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[1] Black's Law Dictionary (10th ed. 2014).

[2] § 943.10(1), Fla. Stat. (2018).

[3] Sheriffs are authorized to conduct arrests; in fact, § 901.04, Florida Statutes, mandates that arrest warrants "shall be directed to all sheriffs of the state."

[4] The term "marshal" may refer to a law-enforcement officer "with duties similar to those of a sheriff," or to a judicial officer who, among other responsibilities, must provide court security. *See*

Black's Law Dictionary (10th ed. 2014); *see also* art. V, §§ 3, 4, Fla. Const. With respect to the State Fire Marshal, his or her agents "have the same authority to serve summonses, make arrests, carry firearms, and make searches and seizures, as the sheriff or her or his deputies, in the respective counties where such investigations, hearings, or inspections may be held." § 633.116, Fla. Stat. (2018).

[5] Wardens in Florida are law enforcement officers. *See* § 790.001(8)(d), Fla. Stat. (2018) ("'Law enforcement officer' means: …(d) An employee of the state prisons or correctional systems who has been so designated by the Department of Corrections or by a warden of an institution"); Fla. Admin. Code R. 33-208.001(1)(a) ("Designation as Law Enforcement Officers. (a) The following officers and employees of the Department of Corrections are designated as law enforcement officers:…wardens of all institutions and community facilities").

[6] In 1974, the phrase "police officer" was replaced with "law enforcement officer" in ch. 943, Fla. Stat. A police officer is defined as a "law-enforcement officer responsible for preserving public order, promoting public safety, and preventing and detecting crime." Black's Law Dictionary (10th ed. 2014).

[7] Florida Highway Patrol officers are "conservators of the peace and law enforcement officers of the state[.]" § 321.05, Fla. Stat. (2018).

[8] Florida Fish and Wildlife Conservation Commission officers are "constituted peace officers[.]" § 379.3311 (enumerating the police powers of the commission and its agents).

[9] Employees tasked with revenue collection for the Division of Alcoholic Beverages and Tobacco and serving as law enforcement officers "must meet the qualifications for employment or appointment as a law enforcement officer set forth under s. 943.13 and must be certified as a law enforcement officer by the Department of Law Enforcement under chapter 943. Upon certification, each law enforcement officer is subject to and has the same authority as provided for law enforcement officers generally in chapter 901 and has statewide jurisdiction. Each officer also has arrest authority as provided for state law enforcement officers in s. 901.15. Each officer possesses the full law enforcement powers granted to other peace officers of this state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities." § 20.165(9)(a),(b), Fla. Stat. (2018).

[10] *See* § 570.65 ("Department of Agriculture and Consumer Services, law enforcement officers").

[11] The powers of a special officer under ch. 354 include the power to make arrests and the power to carry weapons for the reasonable purpose of their offices. *See* § 354.02, Fla. Stat. (2018) ("Powers.—Each special officer shall have and exercise throughout every county in which the common carrier for which he or she was appointed, shall do business, operate, or own property, the power to make arrests for violation of law on the property of such common carrier, and to arrest persons, whether on or off such carrier's property, violating any law on such carrier's property, under the same conditions under which deputy sheriffs may by law make arrests, and shall have authority to carry weapons for the reasonable purpose of their offices.").

[12] § 197.413(9), Fla. Stat. (2018) (Emphasis added).